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August 12, 1996

VIA HAND DELIVERY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 87-268

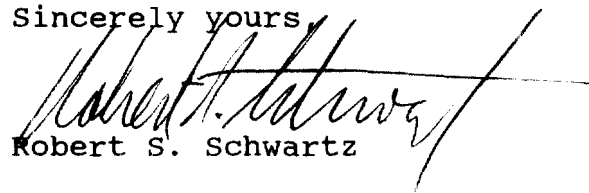
Dear Mr. Caton:

Enclosed for filing are an original and eleven copies of the Reply Comments of Circuit City Stores, Inc. filed in the above-referenced docket.

An additional copy to be date stamped and returned with the messenger for our files is also enclosed.

Thank you for your assistance.

Sincerely yours,


Robert S. Schwartz

Enclosures

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AUG 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

MM Docket No. 87-268

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REPLY COMMENTS OF
CIRCUIT CITY STORES, INC.

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TABLE OF CONTENTS

	Page
REPLY COMMENTS OF CIRCUIT CITY STORES, INC.	1
I. CIRCUIT CITY AGREES WITH THOSE COMMENTERS WHO SUPPORT THE COMMISSION'S DETERMINATION THAT A TRANSMISSION STANDARD IS NECESSARY FOR DTV	3
II. CIRCUIT CITY AGREES WITH THOSE COMMENTERS WHO SUPPORT MAXIMUM COMPATIBILITY BETWEEN DTV TRANSMISSION STANDARDS AND OTHER MVPD TRANSMISSIONS	4
A. Circuit City agrees with those who appreciated the need for common treatment of, and interoperability among, MVPD transmission systems	4
B. The imperative for maximum inter- operability among MVPD services applies equally to a common interface for security circuitry	6
III. CIRCUIT CITY DISAGREES WITH THOSE COMMENTERS WHO ASSERT THAT NO STANDARD IS NECESSARY FOR DTV OR OTHER MVPD SERVICES	7
A. In enacting section 304, Congress embraced rather than rejected the need for standards to achieve interoperability	7
B. Claims that the Commission has indicated it will not adopt standards for digital transmission of cable television are contrary to the record	8
C. Minimal standards are what allow products to develop in deregulated and competitive markets	9
IV. CONCLUSION	10

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Washington, D.C. 20554

In the Matter of)
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Service)

**REPLY COMMENTS OF
CIRCUIT CITY STORES, INC.**

Circuit City Stores, Inc. respectfully submits these reply comments in response to the Federal Communications Commission ("FCC" or "Commission") May 20, 1996 Fifth Further Notice of Proposed Rule Making in the above-captioned proceeding.^{1/}

In its own Comments Circuit City supported the Commission's concern that sufficient attention be paid to national transmission standards with respect to DTV generally, and the concurrent establishment of compatible national standards for digital transmission of cable television signals. Circuit City's main objective, in accordance with section 304 of the Telecommunications Act of 1996,^{2/} is the creation of national-scale competition and consumer choice with respect to televisions, computer

^{1/} Fifth Further Notice of Proposed Rule Making, MM Docket No. 87-268, FCC 96-207, released May 20, 1996 ("Notice").

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, § 304.

accessories, set-top boxes, and other audiovisual, data, and audio navigation devices.

As the nation's largest retailer of branded consumer electronics, Circuit City has a direct and immediate interest in competitive and unbundled markets for all of the devices that receive or otherwise process digital signals that are provided commercially to consumers' homes.^{3/} In our Comments we pointed out that since DTV broadcasters will be able to sell multiple channels of audiovisual programming^{4/}, the Commission in its regulations, pursuant to section 304 of the 1996 Telecommunications Reform Act, will need to ensure that devices for receiving any service offered by a DTV broadcaster be available competitively, from independent manufacturers and retailers.

Accordingly, we urged the Commission to conclude that, to comply with section 304 and to achieve competition on a national basis:

- a transmission standard must be set for DTV;
- maximum compatibility among DTV and other MPVD transmission standards is vital;
- a standard interface with respect to conditional access may be necessary; and
- system operators should not be allowed to provide any device, other than security circuitry, as to which independent manufacture and distribution is not possible.

^{3/} Such products that enable receipt of any service offered by a distributor of multiple channels of audiovisual programming (see 47 U.S.C. § 522(12)) are referred to in section 304 as "navigation devices."

^{4/} See Notice ¶¶ 15, 19, 28.

To avoid delays in this proceeding, we urged that rulemaking pursuant to section 304 be noticed and completed as expeditiously as is possible. It is with this focus on prospects for national competition and consumer choice that we reply to other commenters.

I. CIRCUIT CITY AGREES WITH THOSE COMMENTERS WHO SUPPORT THE COMMISSION'S DETERMINATION THAT A TRANSMISSION STANDARD IS NECESSARY FOR DTV.

Circuit City agreed with a key Commission premise: If a service is to be offered to the public, and there is to be a national, competitive market in the equipment necessary to receive it, there needs to be a national transmission standard. We believe this conclusion applies *whenever there is the possibility of different transmission standards for different geographical regions, whether delivery is by terrestrial broadcast or by wire.*

Commenters who otherwise hold diverse views toward standardization and other Multichannel Video Programming Distribution (MVPD) issues supported the need for a DTV transmission standard:

•General Instrument observed (pp. 3-4): "Consumers must have the assurance that they can tune from one channel to another and be able to receive *all the broadcast stations in their service area.* Adoption of a standard provides this assurance. Absence of a standard will create enough doubt in the minds of enough consumers that some will defer the purchase of new digital TV receivers. (Emphasis added)

•William F. Schreiber observed (p.7): "There are two reasons for detailed standards. One is to ensure that all manufacturers initially produce compatible products

so that DTV may make a rapid penetration of the market. The other is to ensure that improvements can be introduced without making the initial equipment obsolete."

These observations should apply not only to DTV, but also to any other service offered by an MPVD distributor as to which, *in the absence of a standard, different devices would be necessary for reception in different parts of the country.*

II. CIRCUIT CITY AGREES WITH THOSE COMMENTERS WHO SUPPORT MAXIMUM COMPATIBILITY BETWEEN DTV TRANSMISSION STANDARDS AND OTHER MVPD TRANSMISSIONS.

The Commission sought comment as to "whether the public interest would be served by Commission involvement to assure compatibility between digital broadcast standards and digital cable standards,"^{5/} and whether such efforts should apply to other video delivery methods, such as DBS, MMDS, and OVS. Circuit City answered that it believes it is a clear legal responsibility of the Commission to achieve the maximum possible degree of compatibility among transmission standards for such services.

A. Circuit City agrees with those who appreciated the need for common treatment of, and interoperability among, MVPD transmission systems.

In enacting section 304 of the 1996 Act, the Congress made clear that its interest in competitive availability

^{5/} Notice, ¶ 64.

extended to the potential use of consumer-procured products to gain access to, and hence choose among, a number of competing delivery services.^{6/} Several commenters recognized DTV's status as an MVPD system, or agreed that section 304 obliges the Commission to strive for maximum device compatibility:

- Telecommunications, Inc. (pp. 2-3), although disagreeing as to the need for standards, noted DTV's status as an MVPD service and argued that such services ought to be treated similarly.

- The Consumer Federation of America and Media Access Project, reviewing the congressional mandate in section 304, observed (p. 3) that "[t]his proceeding provides the Commission with a once-in-a-lifetime opportunity to promote simple, lower cost access to new technologies by ensuring that one box is capable of receiving both television and computer transmissions."

- The Broadcasters' Comments argued (p. 25): "To ensure that equipment manufacturers and consumers actually realize the economies of scale that adoption of the DTV Standard fosters, incompatible cable technologies **must not encourage reliance on proprietary set-top boxes and duplicative and expensive decoders**. The Commission can avoid future consumer confusion by mandating equipment compatibility now, instead of having to revisit this issue years from now. (Emphasis added)

- The Motion Picture Association of America added (p. 8): "The Commission should encourage private industry to pursue as much interoperability as possible in order to spare consumers unnecessary technical or economic obstacles in switching between, or adding alternative sources of video programming "

^{6/} The House Commerce Committee observed in its report: "Competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality. Clearly, consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources. A competitive market in navigation devices and equipment will allow common circuitry to be built into a single box or, eventually, into televisions, video recorders, etc." H.R. Rep. No. 204, 104th Cong., 1st Sess. 112.

•The Electronic Industries Association and the EIA Advanced Television Committee observed (pp. 17-18): "All delivery media -- whether terrestrial broadcast, cable, satellite or otherwise -- ultimately converge on the consumer. The eventual success of DTV, thus, will depend to a large degree on its interoperability with the other media consumers use."

•Matsushita Electric Corporation of America argued (p. 10) that the use of a common standard in both ATV and "non-broadcast media will promote the competitive availability of set-top boxes from retail channels. Retail availability of set-top boxes is required by Section 304 of the Telecommunications Act of 1996 which requires Commission review and action. MECA urges the Commission to act on competitive availability as soon as possible.

•Zenith Electronics Corporation, which supplies both consumer electronics and cable reception equipment, urged (p. 13) that a common standard apply "for DBS, MMDS and ITFS services and for open video systems" as well as DTV.²¹

Clearly, a broad range of commenters appreciates that DTV is an MVPD service, and thereby subject to section 304, and that maximum commonality among transmission standards for MVPD services will promote sound policy in general and the competitive goals of section 304 in particular.

B. The imperative for maximum interoperability among MVPD services applies equally to a common interface for security circuitry.

The strong rationale for interoperability with respect to transmission modes for DTV and other MVPD services

²¹ Several of these commenters endorsed the ATSC proposed standard as a common transmission standard for these media. Circuit City, however, noted in its comments that it takes no position as to technical attributes of transmission standards. We simply want reform that will end device monopolies and allow us to offer the public a choice of navigation devices for services offered by any Multichannel Video Program Distributor.

applies equally to the need for a common security interface for MVPD services. *There would be little point in enabling receivers or set-top boxes to receive transmissions of competing services if built-in, proprietary security systems are going to require a separate box or receiver for each service.*

At pages 9-13 of its Comments, Circuit City reviewed the legal requirements in this respect and urged the Commission to address this issue as expeditiously as possible in a proceeding pursuant to section 304.

III. CIRCUIT CITY DISAGREES WITH THOSE COMMENTERS WHO ASSERT THAT NO STANDARD IS NECESSARY FOR DTV OR OTHER MVPD SERVICES.

Circuit City cannot agree with those commenters who argued that standards are unnecessary for DTV and other MVPD services.

- A. In enacting section 304, Congress embraced rather than rejected the need for standards to achieve interoperability.

The NCTA (p. 18) searches the 1996 Telecommunications Act for some philippic against standards, and seizes upon the Act's goal of "a procompetitive de-regulatory national policy framework." This language has nothing to do with standards. Indeed, it is entirely consistent with section 304, a sunset provision whose purpose is to *deregulate* entrenched monopolies that for decades have denied consumers a choice.

Section 304 recognizes explicitly that *standards will be necessary to achieve compliance*: it charges the Commission with adopting regulations "in consultation with appropriate industry standard-setting organizations."^{8/} It also explicitly notes that nothing in the section expands or limits Commission authority, to set standards or otherwise. The Commission exercised such authority in the deregulation of telephone CPE when it adopted the standard for the RJ11 jack. Congress clearly intended for the Commission to take similar deregulatory and procompetitive steps in response to section 304.

- B. Claims that the Commission has indicated it will not adopt standards for digital transmission of cable television are contrary to the record.

TCI claims in its comments (p. 24) that the Commission "previously has admitted that the imposition of a digital broadcasting transmission standard on cable and other media would be both unnecessary and would stifle innovation and competition" and suggests that the Commission has determined that transmission standards are not appropriate for cable as well as other MVPD services. This characterization ignores, of course, the repeated statements of the Commission in ET Docket 93-7 that it has decided that a standard is necessary

^{8/} The section does not require that the Commission wait for action by or otherwise defer to the private sector organizations.

for digital cable transmission. In the May 4, 1994 Report and Order in that Docket, the Commission said:

[W]e find that standards for cable digital transmission are necessary to avoid future compatibility problems when cable systems use digital transmission methods, and to allow the mass production of economical consumer equipment that is compatible with cable digital services. In the latter regard, we believe that standardization is needed to ensure the establishment and effective operation of a competitive market in consumer hardware and software products for connection to digital cable service.^{9/}

C. Minimal standards are what allow products to develop in deregulated and competitive markets.

As EIA noted (p.7, n.11), it was the standardization of the RJ-11 telephone jack that opened a previously captive market to competition. Without a common interface, a national market in narrowband access and communication devices could not have developed so efficiently. Similar deregulation is necessary for those broadband networks whose proprietary interfaces have been under the monopolistic control of system operators.

Some MVPD system operators have leveraged their security control over interfaces into regulated monopolies over devices. It is up to the Commission, as it did for

^{9/} See In the Matter of Implementation of Section 17 of the Cable TV Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment, First Report and Order, ET Docket No. 93-7 (rel. May 4, 1994), ¶ 143. This decision was confirmed upon reconsideration, and its relevance to this proceeding specifically noted. See Memorandum Opinion and Order, ET Docket 93-7 (rel. April 10, 1996), ¶ 3 and n. 9.

telephones, to break the monopoly cast. For telephone networks, the Commission adopted minimal standards that have allowed interconnection of computer products that otherwise have avoided official standardization. The Commission is now legally required to take similar action as to services of MVPD distributors. The result will, again, be a flood of competitive products governed only by private, voluntary standards.


CONCLUSION

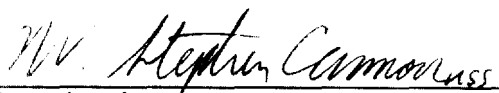
The Commission is legally obliged to preserve competition and consumer choice in this proceeding, not only in DTV but also in related and competing services. Circuit City agrees with other commenters who recognize this obligation as an opportunity to promote competition at the *consumer* level. It disagrees with those who urge the

Commission to create and perpetuate incompatibilities that deny choice, and the benefits of competition, to consumers.

Respectfully submitted,
CIRCUIT CITY STORES, INC.

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